

AMENDED IN SENATE JUNE 18, 2009

AMENDED IN ASSEMBLY JUNE 1, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 125

**Introduced by Assembly Member De Leon
(Coauthors: Assembly Members Beall, Carter, Coto, Eng,
Hernandez, Jones, Lieu, Ma, Solorio, and Torrico)**

January 15, 2009

An act to add Title 25 (commencing with Section 100000) to the Government Code, relating to retirement, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 125, as amended, De Leon. Retirement: California Employee Savings Program.

Existing federal law provides for tax-qualified retirement plans and individual retirement accounts or individual retirement annuities by which private citizens may save money for retirement.

This bill would create the California Employee Savings Program, which would be operative only upon a specified appropriation in the annual Budget Act or if sufficient funds are made available through a nonprofit or private entity or federal funding, as specified. The program would be administered by the Board of Administration of the Public Employees' Retirement System (PERS), with the intent of promoting greater retirement savings for California private employees in a convenient, low-cost, and portable manner. The bill would require the board, under this program, to offer one or more individual retirement accounts or defined benefit plans, as specified, to eligible employees

of participating eligible employers, as defined. The bill would specify that eligible employees of participating employers are not members of PERS. The bill would permit the board, in initiating and administering the program, to, among other things, employ staff and 3rd-party administrators, as necessary, collaborate with various entities in the private sector, recover expenses from contributions or investment returns, as specified, and evaluate and establish the process by which eligible employees who want to contribute a portion of their paycheck to an account offered by the program are able to notify their employers and require the employer to forward the contribution and related information to the program. The bill would require the Employment Development Department to cooperate in this regard. The bill would authorize the Employment Development Department to charge a fee for any administrative costs it incurs by reason of implementing and administering the program. The bill would require the board to make reports to employers on the progress and status of the program.

The bill would also require the board to make specified reports to the Legislature, including a report upon determining that all specified conditions necessary to implement the program can be satisfied, a report if it finds that the program is not self-sustaining, and annual reports on the status of the program, as specified. The bill would require PERS, after specified acts have occurred, to request funding through a Budget Act appropriation or from a nonprofit or private entity or from federal funding for the purpose of implementing the program. The bill would require the board to keep program funds and accounts separate from those of PERS and would prohibit the use of funds in PERS, as specified, to initiate, develop, implement, or administer the program. In addition, the bill would require that all expenses and obligations created by the program be funded by its contributions, returns, and assets, except as the Legislature may appropriate funds for this purpose, to be deposited in the California Employee Savings Program Administrative Fund, which this bill would establish as a continuously appropriated fund. The bill would require PERS to obtain the necessary approvals from federal authorities for the program's implementation. The bill would prohibit any claim, tax lien, or other right of setoff from applying to funds or assets of the program, as specified. The bill would indemnify from the General Fund and hold harmless the present, former, and future board members, officers, employees of, and investment managers under contract with, PERS in connection with any decision or action related to the administration of the program. The bill would

provide that the program may only be implemented if the board determines that certain conditions are satisfied, and would permit the board to discontinue the program on its determination, as specified. The bill would permit the board to adopt regulations in regard to the program, and would provide that the adoption, amendment, or repeal of a regulation is exempted from the rulemaking provisions of the Administrative Procedure Act. Subject to the availability of funds, as specified, the bill would require the board to report to Legislature regarding the feasibility of creating a defined benefit plan option to be available to employers. The bill would also make a statement of findings.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) Currently, 6 million Californians, 43 percent of the state's
- 3 workforce, work at a job that does not offer them a pension or
- 4 retirement savings plan to supplement social security.
- 5 (b) Social security payments alone, which average \$1,081 per
- 6 month in California, will not sustain Californians in their
- 7 retirement. Seniors without savings may be more likely to require
- 8 government assistance with housing, medical care, and other
- 9 necessities.
- 10 (c) Though investments in savings accounts have increased over
- 11 time, investments from low-income small businesses, or
- 12 short-tenured and transient employees, are strikingly low and have
- 13 not increased at the same rate.
- 14 (d) Nationally, two out of three low-wage workers lack access
- 15 to an employer-sponsored retirement plan, while only one in four
- 16 high-wage workers do. Nearly 65 percent of low-income workers,
- 17 those earning less than \$40,000 per year, do not participate in
- 18 employer plans, according to the Congressional Budget Office.
- 19 (e) Only 26 percent of full-time, full-year private sector workers
- 20 in businesses with fewer than 25 employees participated in a
- 21 pension plan in 2004, compared with 69 percent of those employed
- 22 by companies with 500 or more employees. Complexity and cost
- 23 of administering retirement plans may prevent small companies,
- 24 in comparison to larger corporations, from creating retirement
- 25 plans for their employees.

1 (f) Low investment participation rates in retirement plans can
2 also be attributed to a worker losing coverage access after moving
3 into a new job with a new business.

4 (g) Workers today are spending more than they are saving,
5 relying more on credit, and thus accruing debt and putting their
6 future financial security at risk. Nationally, the personal savings
7 rate for individuals has fallen to 0.5 percent of income for 2007.
8 At this rate, even with social security benefits, Californians will
9 not be able to afford retirement.

10 (h) California workers without access to an employer-sponsored
11 retirement plan need a seamless, lifelong savings system, providing
12 them with the opportunity to build their assets and helping them
13 to attain their financial stability and future through a secure,
14 portable savings account.

15 (i) Providing California workers with a guaranteed retirement
16 income to supplement Social Security, traditionally funded by
17 stable employer contributions via a defined-benefit employer-based
18 pension plan, is optimal to ensure that workers accumulate the
19 benefits they need for a secure retirement. California must continue
20 to explore guaranteed replacement income programs, such as
21 defined benefit plans, for working Californians. Establishing and
22 offering a defined benefit plan would require additional study to
23 research and address the complex policies and regulatory approvals
24 necessary for creation and implementation, and would be an
25 important step toward ensuring the retirement security for working
26 Californians.

27 (j) Though guaranteed retirement income programs are valuable
28 savings tools for workers, given the changing needs and work
29 habits of California's workers, alone, they are insufficient to afford
30 workers a comfortable and secure retirement. California workers
31 need additional retirement savings options to ensure their retirement
32 security.

33 (k) In creating an additional savings program for its workers,
34 California would supplement existing savings options, assisting
35 California's working men and women to save for retirement. This
36 program would be funded by the program's participants and would
37 be maintained and administered at no cost to taxpayers.

38 (l) The California Employee Savings Program is hereby
39 established by this act to promote expanded retirement security

1 for working Californians' employers' sponsorship of retirement
2 plans for their employees.

3 SEC. 2. Title 25 (commencing with Section 100000) is added
4 to the Government Code, to read:

5
6 TITLE 25. CALIFORNIA EMPLOYEE SAVINGS PROGRAM
7

8 100000. For purposes of this title:

9 (a) "Board" means the Board of Administration of the Public
10 Employees' Retirement System.

11 (b) "Eligible employer" means a person or entity engaged in a
12 business, industry, profession, trade, or other enterprise in the state,
13 whether for profit or not for profit, but excluding the state, any
14 county, any municipal corporation, or any of its units or
15 instrumentalities, and that satisfies the requirements to establish
16 or participate in a SIMPLE IRA or a payroll deposit IRA
17 arrangement. An eligible employer does not include any employer
18 to the extent that the employer replaces a preexisting retirement
19 plan with a an arrangement provided for by this title.

20 (c) "Eligible employee" means a person who is an employee of
21 an eligible employer.

22 (d) "ERISA" means the Employee Retirement Income Security
23 Act of 1974, as amended.

24 (e) "IRA" means an individual retirement account or individual
25 retirement annuity under Section 408, 408A, or 408(p) of the
26 Internal Revenue Code of 1986.

27 (f) "Participating employer" means an eligible employer that
28 maintains or participates in an IRA arrangement provided for by
29 this title for eligible employees.

30 (g) "Payroll deposit IRA arrangement" means an arrangement
31 by which an employer makes its payroll system available to
32 employees as a conduit for transferring salary reduction
33 contributions to IRAs.

34 (h) "Program" means the California Employee Savings Program
35 established by this title.

36 (i) "SIMPLE IRA" means a SIMPLE IRA program under
37 Section 408(p) of the Internal Revenue Code of 1986.

38 (j) "System" means the Public Employees' Retirement System.

39 100002. (a) There is hereby established a retirement savings
40 program known as the California Employee Savings Program to

1 be administered by the board with the intent of promoting greater
2 retirement savings for California private employees in a convenient,
3 low-cost, and portable manner. The California Employee Savings
4 Program is a voluntary, universal, portable retirement account for
5 California private employees.

6 (b) The program shall include, as determined by the board, one
7 or more of the following components:

8 (1) One or more payroll deposit IRA arrangements.

9 (2) One or more traditional IRA arrangements.

10 (3) One or more SIMPLE IRA plans.

11 (4) Other IRAs.

12 (c) Pursuant to the authority granted under this title, the board
13 may establish the following:

14 (1) Prototype or master and prototype plans or IRAs.

15 (2) Multiple employer plans.

16 (3) Group administrative service arrangements that allow eligible
17 employers to achieve economies of scale with respect to their
18 retirement savings arrangements relating to investment, accounting,
19 payroll processing, employee communications, and investor
20 education.

21 (4) Group investment vehicles for the plans or IRAs.

22 (5) Custodial or trustee arrangements for payroll deposit
23 programs or for other plans or IRAs.

24 (d) Participating employers and their eligible employees do not
25 become members of, or participants in, the Public Employees'
26 Retirement System. The California Employee Savings Program
27 does not create a new or separate public pension or retirement
28 system.

29 100004. To initiate, implement, maintain, and administer the
30 program, the board may:

31 (a) Employ staff.

32 (b) Retain and contract with private financial institutions, other
33 financial and service providers, consultants, third-party
34 administrators, and other professionals as necessary, without regard
35 to provisions regarding competitive bidding.

36 (c) Collaborate and cooperate with private financial institutions,
37 service providers, business, financial, trade, membership, and other
38 organizations to the extent necessary or desirable for the effective
39 and efficient design, implementation, and administration of the

1 program and to maximize outreach to eligible employers and
2 eligible employees.

3 (d) Cause expenses incurred to initiate, implement, maintain,
4 and administer the program to be paid from contributions to, or
5 investment returns or assets of, the program or ~~IRAs~~ *IRA plans or*
6 *arrangements* established under the program, to the extent
7 permitted under federal law, except for expenditures that are
8 provided for through appropriations from the Legislature.

9 (e) Facilitate compliance by the ~~IRAs~~ *IRA plans or*
10 *arrangements* established under the program with all applicable
11 requirements for the plans under the Internal Revenue Code of
12 1986, including tax qualification requirements or any other
13 applicable law and accounting requirements, including providing
14 or arranging for assistance to plan sponsors and individuals in
15 complying with applicable law and tax qualification requirements
16 in a cost-effective manner.

17 (f) Cause the *IRA plans or* arrangements established under the
18 program to be designed, established, and operated:

19 (1) In accordance with best practices for retirement savings
20 vehicles.

21 (2) To maximize participation, saving, and sound investment
22 practices, and to encourage the use of automatic features, including,
23 but not limited to, automatic enrollment and appropriate selection
24 of default investments.

25 (3) With simplicity, ease of administration for participating
26 employers, and portability of benefits.

27 (g) Seek to minimize costs by assisting or facilitating the pooling
28 of small employers and individuals in purchasing ~~IRAs~~, *IRA plans*
29 *or* arrangements, and investments, and through economies of scale,
30 standardization, designation of investment types, and other
31 measures.

32 (h) Arrange for collective, common, and pooled investment of
33 assets of the *IRA* arrangements, including investment in
34 conjunction with other funds with which those assets are permitted
35 to be collectively invested, with a view to saving costs through
36 efficiencies and economies of scale, but only to the extent that
37 these collective investment arrangements would not jeopardize or
38 alter the current exemptions from ERISA and federal securities
39 laws of the plans maintained by the system and administered by
40 the board for state and local government employers and employees.

1 Nothing in this subdivision shall adversely affect or otherwise
2 compromise the system's ability to comply with applicable federal
3 and state law and conditions for favorable tax treatment.

4 (i) Disseminate educational information concerning saving and
5 planning for retirement.

6 (j) Disseminate information concerning the tax credits available
7 to small business owners for establishing new retirement plans
8 and the federal saver's tax credit available to moderate- and lower
9 income households for saving in ~~plans and IRAs~~ *IRA plans or*
10 *arrangements*.

11 (k) Submit progress and status reports to participating employers
12 and eligible employees.

13 (l) If necessary, determine the eligibility of an employer,
14 employee, or other individual to participate in the program.

15 (m) Evaluate and establish the process by which eligible
16 employees of participating employers who want to contribute a
17 portion of their paycheck to an account offered by the program
18 are able to notify their employers, either at the time of hiring or
19 thereafter, and require the participating employer to forward the
20 employee contribution and related information to the program or
21 its agents, *provided, however, the board shall not be responsible*
22 *for ensuring employer compliance in executing requests by eligible*
23 *employees to participate in the program*. This may include, but is
24 not limited to, the ability to use the current tax processing and
25 accounting system of the Employment Development Department,
26 financial services companies, and third-party administrators with
27 the capability to receive and process employee information and
28 contributions for payroll deduction IRA arrangements or other
29 ~~retirement savings~~ *IRA plans or* arrangements authorized by this
30 title. The Employment Development Department shall assist the
31 board in its efforts to study and implement these tasks, and, if
32 selected by the board, shall cooperate by forwarding the employee
33 contribution to the ~~IRA arrangement or other retirement savings~~
34 ~~arrangements~~ *plans or arrangements established* under the
35 program.

36 (n) Subject to the conditions specified in Section 100014, allow
37 participating employers to use the program to contribute to the
38 account on their employees' behalf or match their employees'
39 contributions.

100005. If the Employment Development Department participates in the implementation and administration of the program, it may charge a fee for any administrative costs it incurs by reason of implementing and administering the program.

100005.5. (a) The board shall keep separate and distinct any and all IRA plans or arrangements established under the program, including any and all funds or accounts of those IRA plans or arrangements, from all programs, funds, or assets maintained by the system and administered by the board for state and local government employers and employees. No funds in the system's defined benefit plans, health and welfare plans, ~~or its supplemental income plans~~ *deferred compensation plans, or any other plan administered by the board* for state and local government employers and employees shall be used to *study*, initiate, develop, implement, or administer the program.

(b) All expenses and obligations created by, or pursuant to, the program shall be funded solely from contributions to, or investment returns or assets of, the programs, accounts, IRA *plans or* arrangements, or defined benefit plan arrangements established under the program, except as the Legislature may provide for funding through appropriation which shall be deposited in the California Employee Savings Program Administrative Fund established pursuant to Section 100016.

100006. The board shall obtain the necessary approvals, rulings, opinions, determinations, or confirmations from federal authorities or agencies, including the Internal Revenue Service, the Department of Labor, or the Securities and Exchange Commission. It is intended that the IRA *plans or* arrangements established under the program shall adhere to all applicable standards and requirements under federal law regulating the operation of, and the offering, sale, or distribution of securities under, those plans or arrangements. *The board shall also obtain approval from the Department of Labor that the default investments offered under an automatic enrollment feature of any IRA plan or arrangement has the same safe-harbor relief as plan fiduciaries receive for "qualified default investment alternatives" (QDIAs) under the Department of Labor's regulations.*

100008. No claim, tax lien, or other right of setoff of the state or any of its agencies or instrumentalities shall apply against any funds or assets held for the benefit of individuals in a plan or IRA

1 under the program or coming into the possession of a state official
2 under the program.

3 100010. No claim, tax lien, or other right of setoff of the state
4 or any of its agencies or instrumentalities shall apply against any
5 funds or assets administered by the board for the purpose of
6 providing pension, long-term care, or health benefits for employees
7 of the state or contracting agencies, by reason of any decision or
8 action related to the initiation, implementation, maintenance, or
9 administration of the program.

10 100012. Present, future, and former board members of the
11 Public Employees' Retirement System, jointly and individually,
12 state officers and employees, and investment managers under
13 contract with the Public Employees' Retirement System shall be
14 indemnified from the General Fund and held harmless by the State
15 of California from all claims, demands, suits, actions, damages,
16 judgments, costs, charges, and expenses, including court costs and
17 attorney's fees, and against all liability, losses, and damages of
18 any nature whatsoever that they shall or may at any time sustain
19 by reason of any decision or action related to the initiation,
20 implementation, maintenance, or administration of the program.

21 100013. The board shall follow the process described in this
22 section in developing and implementing the program:

23 (a) Initially, the board shall conduct an economic feasibility
24 study to determine whether the necessary conditions for
25 implementation can be met, including, but not limited to, likely
26 participation rates, participants' comfort with various investment
27 vehicles and degree of risk, contribution levels, and the rate of
28 account closures and rollovers. The board shall present these
29 findings to the Legislature for review. The board shall conduct
30 this study only if sufficient funds therefor are made available
31 through a nonprofit or private entity, federal funding, or an annual
32 Budget Act appropriation. The board shall not use assets, resources,
33 or personnel administered by the board that are not associated with
34 this study. *The board shall notify the Legislature if it determines*
35 *that it must delay the start of the study, development, and approval*
36 *process until completion of PERS pension system resumption*
37 *project.*

38 (b) Upon completing the study described in subdivision (a) and
39 reaching the conclusion that the program is feasible, the board
40 shall request *additional* funding through a Budget Act appropriation

or from a nonprofit or private entity or federal funding to be used for the purpose of obtaining the necessary approvals described in Section 100006 and subdivision (a) of Section 100014 and for the purpose of designing the program. After obtaining the necessary approvals to implement the program and completing the design of the program, the board shall report to the Legislature as described in subdivision (a) of Section 100017. ~~The board shall not use assets, resources, and personnel administered by the board that are not associated with these purposes.~~

(c) After completing the actions described in subdivision (b), the board shall request funding through a Budget Act appropriation or from a nonprofit or private entity or federal funding for the purpose of implementing the program.

(d) No funds in or resources, including personnel, of the defined benefit plans, health and welfare plans, deferred compensation plans, or any other plan administered by the board for state and local government employers and employees may be used to undertake any actions described in subdivisions (a) through (c), except where other funds are received from an appropriation or nonprofit or private entity for those purposes.

100014. (a) The program may only be implemented if the board determines the following conditions are satisfied:

(1) There is an adequate appropriation or loan or other funding under appropriate terms and conditions to the California Employee Savings Program Administrative Fund sufficient to fund program development, implementation, and administrative costs. *In no event shall the board be required to repay any moneys or funds made available to the program through an appropriation, a nonprofit or private entity, or otherwise, unless and until the program's fees have generated sufficient revenue to pay for and sustain the program's accrued administrative costs.*

(2) Approval satisfactory to the board is received from agencies or departments of the United States government, including, but not limited to, the Internal Revenue Service, the United States Department of Labor, and the Securities and Exchange Commission that both of the following are true:

(A) The IRA plans or arrangements offered under the program do not jeopardize or alter the current status of the system with respect to its operations under relevant federal laws.

1 (B) Any payroll deposit IRA arrangement offered under the
2 program is not subject to ERISA.

3 (3) The board obtains offers from well-qualified and experienced
4 financial service providers to administer the recordkeeping,
5 investment, and compliance functions of any IRA plan or
6 arrangement offered under the program.

7 (4) The program will be self-sustaining.

8 (b) If the board determines that all of the conditions in
9 subdivision (a) can be satisfied, it shall file a report with the
10 Legislature pursuant to paragraph (1) of subdivision (a) of Section
11 100017.

12 (c) If the board determines that any of the conditions in
13 subdivision (a) cannot be satisfied, the program shall not be
14 implemented. If, at any time after initial implementation, any of
15 the conditions set forth in subdivision (a) are not satisfied, the
16 board may discontinue the program. In either instance, the board
17 shall file a report with the Legislature pursuant to paragraph (2)
18 of subdivision (a) of Section 100017. The board shall include in
19 its report suggested funding options and alternative ways of
20 operating the program, including, but not limited to, identifying
21 another entity to study, design, or implement the program.

22 (d) If, subsequent to the program's implementation, any
23 traditional or payroll deposit IRA *plan or* arrangement offered
24 pursuant to the program becomes subject to ERISA, or the board
25 determines in its discretion that it may be feasible to offer another
26 plan or arrangement authorized by subdivision (b) of Section
27 100002, the board shall have the sole discretion to determine
28 whether it shall establish or maintain the plan or arrangement that
29 is subject to ERISA, and in no event shall the board be required
30 to establish or maintain that plan or arrangement.

31 100016. (a) The California Employee Savings Program
32 Administrative Fund is hereby established to serve as the repository
33 of funds received by the program for administrative expenses
34 pursuant to this title.

35 (b) Notwithstanding Section 13340 of the Government Code,
36 all moneys in the California Employee Savings Fund shall be
37 continuously appropriated without regard to fiscal years to carry
38 out the purposes of this title.

39 (c) The board may establish multiple accounts within the
40 California Employee Savings Program Administrative Fund to

1 assist in the allocation of funds for various program needs and
2 functions, including administration, operation, and reserve.

3 100017. The board shall submit reports to the Legislature, as
4 follows:

5 (a) (1) Upon determining that all the conditions necessary to
6 implement the program under subdivision (a) of Section 100014
7 can be satisfied, the board shall submit a report to the Legislature
8 that shall include, but not be limited to, information regarding the
9 expectations of the program, an outline of the program, and details
10 regarding the administration and projected cost of the program.
11 The board shall not implement the program until after the report
12 is presented to the Legislature, and moneys in an amount sufficient
13 to fund the projected cost of the program are appropriated by the
14 Legislature in an annual Budget Act.

15 (2) If the board concludes that the program will not be
16 self-sustaining, or if the necessary conditions specified in
17 subdivision (a) of Section 100014 are not satisfied, the board shall
18 submit a report to the Legislature regarding the details of its
19 conclusion, including, but not limited to, legal, financial,
20 regulatory, and administrative considerations and obstacles, and
21 actions taken to address those concerns. This report shall also
22 include any changes that the board believes would make it feasible
23 to implement the programs, including suggested changes that the
24 Legislature could make in order to implement the program.

25 (b) The board shall submit annual reports to the Legislature on
26 the status of the program, including, but not limited to, outreach,
27 investments, and solvency efforts.

28 (c) If the board finds it necessary to suspend or discontinue the
29 program, it shall submit a report to the Legislature at least 90 days
30 prior to that suspension or discontinuation. This report shall
31 include, but is not limited to, any conditional changes that need to
32 be made by the Legislature in order to continue or improve the
33 program, and address any concerns that the board has regarding
34 the program.

35 100018. The board may adopt regulations that implement this
36 title. The adoption, amendment, or repeal of a regulation authorized
37 by this section is hereby exempted from the rulemaking provisions
38 of the Administrative Procedure Act (Chapter 3.5 (commencing
39 with Section 11340) of Part 1 of Division 3 of Title 2. However,
40 the board shall transmit those regulations to the Office of

1 Administrative Law for filing with the Secretary of State and
2 publication in the California Code of Regulations. Those
3 regulations shall become effective immediately upon filing with
4 the Secretary of State.

5 100019. The board shall submit to the Legislature a report
6 evaluating the feasibility of creating a defined benefit plan option
7 available to employers, including any related considerations and
8 issues. This report shall be required only if an annual Budget Act
9 appropriates moneys, or funds are made available through a
10 nonprofit or private entity or federal funding, in amounts sufficient
11 to allow the board to study, develop, and obtain the approvals
12 necessary to implement the program pursuant to the conditions in
13 subdivision (a) of Section 100014. Existing assets, resources, and
14 personnel administered by the board shall not be used to develop,
15 initiate, implement, or administer the program without that
16 appropriation or outside funding.

17 100022. This title shall become operative only if an annual
18 Budget Act appropriates moneys or funds are made available
19 through a nonprofit or private entity or federal funding, in amounts
20 sufficient to allow the board to study, develop, and obtain the
21 approvals necessary to implement the program pursuant to the
22 conditions in subdivision (a) of Section 100014. Existing assets,
23 resources, and personnel administered by the board shall not be
24 used to develop, initiate, implement, or administer the program
25 without that appropriation or outside funding.